

App. No. 09/682,627
Amendment dated October 13, 2003
Reply to Office action of May 14, 2003

REMARKS

Summary of Amendments

In the specification, the abstract word count has by amendment been reduced to fewer than 150 words.

Claims 2, 3-5, 8 and 9, and 12-36 are pending in this application. Claims 1, 6 and 7 have been canceled, and claims 10 and 11 withdrawn as pointed out in the Office action. Claims 2 and 3 have been rewritten in independent form each to include all the limitations of claim 1. Claims 4 and 5 have been amended to accord with the cancellation of claim 1 and the amendments made to claims 2 and 3. Claims 12-14, 16, 19, 20 and 23-25 have been amended to make editorial revisions and to correct deficiencies in dependencies as pointed out by the Examiner. In turn, new claims 29-36 have been added as necessitated to correct the dependency problems and preserve the same scope as intended by the corresponding original claims.

Specification (Objections)

The abstract was objected to for being in excess of 150 words in length. The abstract has been accordingly shortened by the present amendments.

The disclosure was objected to on grounds that the "elements" (embodied examples) set forth on pages 13-23 of the specification "are not supported by known scientific principles pertaining to magnetic or electromagnetic devices, and contain anecdotal evidence claiming the functionality of the device in certain medical and non-medical situations."

As to scientific principles in support of the section of the disclosure objected to in the Office action, in paragraph [0112] Applicant has incorporated two publications by reference. Applicant believes these publications provide sufficient support in terms of scientific principles pertaining to his invention. Although the references are currently available only in Japanese, it is respectfully submitted that the content is not essential material as defined in M.P.E.P. § 608.01(p), and therefore that the incorporation of these references is proper.

As to the assertion that the evidence presented in the embodied examples is "anecdotal," Applicant submits herewith a declaration under 37 C.F.R. § 1.132 attesting to actual experiments carried out using the invention as set forth in the instant application.

Should, however, the foregoing objection to the specification made in the Office action still be deemed not overcome, a request is hereby made that such objection as being not necessary to further consideration of the claims be held in abeyance until allowable subject matter is indicated.

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Claim Objections

Claim 7 was objected to and has been cancelled.

Claim 12 was objected to for informalities in its preamble. By the present amendments, claim 12 has been revised to make the metes and bounds of the claim clear.

Claims 19, 20 and 23-25 were objected to as being multiply dependent claims that refer to other multiply dependent claims. As noted in the summary made above of the present amendments, the deficiencies in dependencies have been corrected.

Claim Rejections - 35 U.S.C. § 101

Claims 13-18, 21, 22 and 26-28 stand rejected under 35 U.S.C. § 101 for claiming subject matter that lacks utility.

In response to this rejection, a declaration under 37 C.F.R. § 1.132 by the inventor in the present application, Masakazu Karita is submitted herewith. It is believed that by the present declaration, Applicant has made at least one credible assertion of specific utility for his invention as set forth in the claims rejected under this section.

M.P.E.P. §2107.01 states that, as pointed out in *E.I. du Pont De Nemours and Co. v. Berkley and Co.*, 620 F.2d 1247, 1260 n.17, 205 USPQ 1, 10 n.17 (8th Cir. 1980),

A small degree of utility is sufficient . . . The claimed invention must only be capable of performing some beneficial function . . . An invention does not lack utility merely because the particular embodiment disclosed in the patent lacks perfection or performs crudely . . . A commercially successful product is not required . . . Nor is it essential that the invention accomplish all its intended functions . . . or operate under all conditions . . . partial success being sufficient to demonstrate patentable utility . . . In short, the defense of non-utility cannot be sustained without proof of total incapacity.

Irrespective of the presently submitted declaration, applicant respectfully asserts that a *prima facie* case, including factual findings, that the present invention as set forth in the rejected claims lacks utility has yet to be established by the Office, let alone "proof of total incapacity."

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Claim Rejections - 35 U.S.C. § 102

Claims 1-6, 8 and 9; Miekka et al. '692

Claims 1-6, 8 and 9 stand rejected under 35 U.S.C. § 102(b) as anticipated by or in the alternative, under 35 U.S.C. § 103(a) as obvious over, U.S. Pat. No. 6,037,692 to Miekka et al.

The Office action states on page 5, at lines 4-6, "The directions of the windings are simply an obvious engineering design choice since the direction of the winding of the wire does not affect the electromagnetic field when electricity is applied to the winding."

The present invention does not involve the application of electricity to the wire coiled about the magnets of the claimed physical-health tuning means. Moreover, Applicant states the direction is crucial to the effectiveness of the claimed device. Specifically, paragraph [0016] of the specification states, "Further, a left-winding direction to the turns in the wire coils would not be effective; in a preferred embodiment, the coils should have a right-winding direction. Optionally, however, wire-wound magnets coiled with right-hand windings may alternate with magnets coiled with left-hand windings, in the plurality assembled to form a physical-health tuning means under the present invention."

Claims 1 and 6 have been cancelled. Claims 2 and 3 have been rewritten in independent form, and now each recite

*An electrical-power-sourceless physical-health tuning means comprising:
a plurality of bar magnets each of whose N and S poles runs lengthwise from
end to end of the magnet, splitting the magnet by polarity longitudinally into
N-obverse and S-reverse sides.*

Furthermore, claim 2 now recites

non-magnetic yet electroconductive wire arranged coiling each of said bar magnets in right-hand turns, with respect to the obverse face thereof, from one end to the other end of the magnet in the lengthwise direction; said plurality of bar magnets being disposed in, and selected to have force of magnetic attraction strong enough to hold the magnets together in, a configuration forming a tubular hollow with the N-pole faces adjoining the S-pole faces in alternation;

and claim 3 now recites

non-magnetic yet electroconductive wire arranged coiling alternate ones of said bar magnets in right-hand turns, with respect to the obverse faces thereof, from one end to the other end of the magnets in the lengthwise direction, and

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on the remaining ones of said bar magnets said wire is arranged coiling the magnet obverse faces in left-hand turns from one end to the other end of the magnets in the lengthwise direction; said plurality of bar magnets being disposed in, and selected to have force of magnetic attraction strong enough to hold the magnets together in, a configuration forming a tubular hollow with the N-pole faces adjoining the S-pole faces in alternation.

It is respectfully submitted that the present invention as now recited in claims 2 and 3 set forth above is not disclosed by Meikka et al.

Furthermore, it is respectfully asserted that nothing is taught or suggested in Meikka et al. that would lead one skilled in the art to arrive at the configuration of the present invention as now recited in independent claims 2 and 3.

In particular, nothing is disclosed, nor in the alternative, taught or suggested, in Meikka et al concerning a specific configuration of bar magnets, "each of whose N and S poles runs lengthwise from end to end of the magnet, splitting the magnet by polarity longitudinally into N-obverse and S-reverse sides," and each of which is wound with non-magnetic yet electroconductive wire in the manner recited in claims 2 and 3.

Claims 4 and 5 now respectively depend from claims 2 and 3, respectively, and claims 8 and 9 each depend from claim 4. Accordingly, these claims should be held allowable as depending from what are respectfully asserted to be allowable base claims.

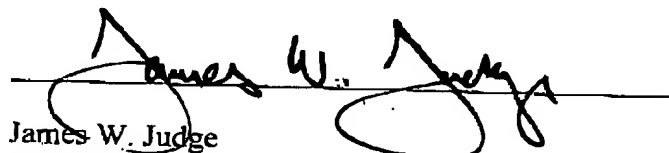
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A response to this Office Action was due by August 14, 2003, and consequently a Petition for Extension of Time, along with a credit-card payment authorization form, is attached hereto. Please consider this Amendment as timely filed.

Accordingly, Applicant courteously urges that this application is in condition for allowance. Reconsideration and withdrawal of the rejections is requested. Favorable action by the Examiner at an early date is solicited.

Respectfully submitted,

October 14, 2003


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